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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/396,987 | 09/16/1999 | RADE GVOZDANOVIC | 476-1845 | 8204 |

7590 02/25/2004

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EXAMINER

HYUN, SOON D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2663

DATE MAILED: 02/25/2004

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/396,987

Applicant(s)

GVOZDANOVIC, RADE

Examiner

Soon-Dong Hyun

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-13 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7, and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Shibata et al (U.S. Patent No.6,226,264).

Regarding claim 1, 7, 11-13, Shibata et al (Shibata) discloses an apparatus comprising an processor (FIG. 4 and 5) performing a method of monitoring a flow of ATM cells comprising the steps of:

setting a first time interval (col. 5, lines 17-19) over which measurements to be made;
counting number of packets (cells) flowing during that time interval (col. 5, lines 17-25, col. 9, lines 13-14); and
using the count to derive parameters (current cell rate, col. 9, lines 30-35) which are indicative of the traffic meeting a maximum cell rate (PCR).

Shibata further discloses that the cell flow should not exceed the PCR and a sustained cell rate (SCR) (col. 2, lines 35-39) and a counter for the SCR (col. 9, lines 13-14), i.e., counting the cell flow for comparing the result with the SCR is inherently required. Therefore, the step of using the count to derive parameters (current cell rate, col. 9, lines 30-35) which are indicative of the SCR is inherent.

Art Unit: 2663

Regarding claims 2 and 3, Shibata further discloses to compare the current cell rate by counting the number of cells for the current flow to the PCR and SCR (equivalent to an expected number of cells corresponding to the PCR and SCR) to determine whether the traffic meets the PCR and the SCR which are an agreed traffic contract.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, and 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Shibata et al (U.S. Patent No. 6,226, 264)

Regarding claims 6, and 9-10, Shibata et al do not explicitly teach values for time intervals for the PCR and the SCR and the time interval for the PCR is shorter than the time interval for the SCR.

It will be apparent to those of skill in the art that the time intervals of Shibata are set according to a status of the network (coverage, speed, redundancy, etc.) without deviating from the broad principle of the invention. Therefore, it would have been obvious to one having ordinary skill in the art to set 500 ms for the SCR and 50-100 ms for PCR.

Regarding claim 8, it is an Official Notice that the time interval for the PCR is shorter than the time interval for the SCR is known in the art. It would have been obvious to one having ordinary skill in the art to incorporate shorter time interval for the PCR to tolerate peak traffic burst occurred in a shorter time.

Allowable Subject Matter

5. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon-Dong Hyun whose telephone number is (703) 305-4550. The examiner can normally be reached on Monday-Friday from 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen, can be reached on (703) 308-5340.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

7. Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

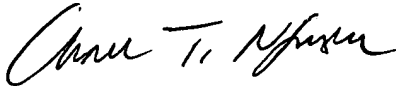
Alexandria, VA 22313-1450

Or faxed to: 703-872-9306 for formal communications intended for entry with a label of

"OFFICIAL" and for informal or draft communications with a label of "PROPOSED" or "DRAFT" (attn: Art Unit 2663, Soon-Dong Hyun).


S. Hyun

02/20/2004


CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600